

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN R. JOHNSON,

Defendant and Appellant.

D047679

(Super. Ct. No. SCE219872)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

[Change in Judgment]

THE COURT:

It is ordered the opinion filed May 24, 2007, is modified as follows:

1. On page 1, the first paragraph, the last sentence is modified so that the sentence now reads: "Affirmed in part, reversed in part and remanded for further sentencing proceedings."
2. On page 1, the second paragraph, the last sentence is modified so that the last sentence now reads: "We affirm in part, reverse in part and remand for further sentencing proceedings."
3. On page 6, the first full paragraph, in the first sentence, the words "to see if" are added after "defendant pleaded guilty," so that the sentence now reads:

"In *Shepard*, the Supreme Court interpreted the federal Armed Career Criminal Act (ACCA) (18 U.S.C., § 924(e)) and addressed whether at sentencing a court may look to police reports or complaint applications to determine the character of a burglary to which the defendant pleaded guilty to see if it qualified the defendant for a minimum 15-year sentence under the act."

4. On page 9, first full paragraph, the sentence is modified so that the sentence now reads:

"We conclude the police reports were not part of the record of conviction and therefore could not provide substantial evidence to show Johnson personally inflicted great bodily injury or support a finding his prior conviction was either a prior serious felony conviction or prior strike conviction."

5. On page 10, second full paragraph, the sentence is modified so that the sentence now reads:

"In sum, the People once again failed to present substantial evidence to support a finding Johnson personally inflicted great bodily injury in case No. ECR7455 and thus that his prior conviction qualified as a prior serious felony conviction or a strike conviction."

6. The "DISPOSITION" is modified so that it now reads:

"The judgment is reversed as to the true finding that the battery with serious injury in San Diego County Superior Court case No. ECR7455 was a prior strike conviction or a prior serious felony conviction. The indeterminate term is vacated and the cause is remanded for resentencing. In all other respects, the judgment is affirmed."

There is a change in judgment.

The petition for rehearing is denied.

McCONNELL, P. J.

Copies to: All parties